

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 243
Title 14, California Code of Regulations
Re: Take of Wild Broodstock for Aquaculture Purposes

- I. Date of Initial Statement of Reasons: August 8, 2008
- II. Date of Pre-Adoption Statement of Reasons: October 21, 2008
- III. Date of Final Statement of Reasons: November 18, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: September 4, 2008
Location: Kings Beach, CA
 - (b) Discussion Hearing: Date: October 3, 2008
Location: Santa Rosa, CA
 - (c) Adoption Hearing: Date: November 14, 2008
Location: Huntington Beach, CA
- V. Update:

A minor change to the Informative Digest was made to clarify that a permit holder does not need a commercial license since they must be a registered aquaculturist. A registered aquaculturist is exempt from this requirement by the Fish and Game Code (FGC) Section 15300. This change will reduce public confusion that arose from the original description of the regulatory action.

The Department recommended a \$500 administration fee to recover the Department costs for processing and initial inspection for a wild broodstock permit based upon the following Table 1.

The Fish and Game Commission adopted the proposed regulations at its November 14, 2008 meeting.

Table 1. Estimated Processing and Inspection Cost of Broodstock Permit		
<i>Associate or Senior Fish Pathologist trip to Northcoast/Delta from Sacramento/Bodega ¹</i>		
Inspection time	4 hrs.	\$183.82
Vehicle costs ²	200 miles	\$75.02
Travel time ³	3.3 hrs.	\$153.18
<i>Staff time and vehicle costs total</i>		\$412.02
Dept. overhead (21.91%)		\$90.27
Total Cost		\$502.29
Estimated cost for Northcoast/Delta trip = \$500		
Footnotes 1) Salary estimates derived from 50/50 split of Associate and Senior positions. 2) Vehicle costs based upon 50/50 mix of private and state vehicles. 3) Travel time based upon 55 mph.		

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

(1) George Ray, registered aquaculturist, e-mail dated September 29, 2008:

- a. In general this section appears to be unnecessarily long, detailed, and burdensome to both the DFG and the collector. A rewrite with emphasis on brevity is suggested.
- b. Why is commission authorization required for striped bass? This is a non-native species that poses a threat to native specie, some of which are endangered, threatened or fully protected.
- c. Why is an initial site inspection required, if the collector already has an aquaculture registration, and is already authorized to possess the specie? Shouldn't this site inspection fee already be covered by the aquaculture registration fee. I suggest the fee be limited to processing the paper work only.
- d. Why is a commercial fishing license required? Especially for those specie that cannot be commercially fished? Surely the number of individuals to be collected does not justify a commercial fishing license. Why aren't the collection permit and the aquaculture registration enough?
- e. Why is the recreational take of any kind prohibited while taking the wild plants and animals authorized under the permit, if the take complies with recreational take regulations and the individual has a recreational fishing license?
- f. What is the purpose of requiring a written report? Will the aquaculture

coordinator take any action in regards to the report or will it simply gather dust or be trash-caned?

- g. How many classes of commercial fishing license does the department want? If the department is going to require a commercial fishing license, sole possession should be given to the collector in a manner similar to how other commercial fishermen are treated. If the proposed requirement of a commercial fishing license is dropped, a simple method or methods of disposal should be adopted in these regulations.

Department Response:

- a. Comment noted.
- b. This is not part of the proposed changes and the requirement was originally approved by the Commission either in 1985 or 1991. I suspect the threat to non-native species is the reason the Commission must authorize all permits for striped bass as also stated in the question.
- c. The Department is proposing that wild broodstock may need to help separately from non-wild broodstock for disease purposes as with sturgeon for White Sturgeon Iridiovirus. This new inspection is to determine if this measure is warranted to reduce the possibility of disease transmission into the natural environment. Only a small number of aquaculture facilities seek a wild broodstock permit each year, and the aquaculture registration fee doesn't provide funding for a wild broodstock disease inspection.
- d. The fish or species taken under a wild broodstock permit are for aquaculture purposes, and the collector may not necessarily be the permit holder who must be a registered aquaculturist. If the permit holder is not present, the Department wants the collector operating under the wild broodstock permit to also possess a commercial fishing license pursuant to FGC Section 15300 which requires aquatic plants or animals may be legally obtained from the following sources: 1) A holder of a commercial fishing license, 2) A registered aquaculturist, 3) The Department, and 4) Imported sources authorized by Chapter 7 (commencing with Section 15600). The registered aquaculturist is exempt from this requirement by the same section.
- e. This proposed measure was developed as broodstock collection normally uses equipment that is not allowed for recreational take. Some collectors have been retaining animals under a recreational license in the same vessel which leads to an enforcement issue as the Department can not determine if illegal gear was used to take these individuals. Therefore when a vessel is operating under the authority of broodstock permit, the Department is proposing no recreational take is to be allowed. This is similar to the requirement for commercial vessels.

- f. The written report is to ensure the wild broodstock are being used for broodstock purposes only by the registered facility. The report will be used in the evaluation of future wild broodstock permit requests, and the Fisheries Branch and the Law Enforcement Division are also interested in reviewing these reports.
- g. The Department is not proposing any changes to the commercial fishing license with this proposal as a commercial fishing license are already issued to an individual only.

(2) Mark Drawbridge, California Aquaculture Association (CAA), letter dated October 2, 2008:

- a. The CAA feels the Aquaculture Disease Committee and Aquaculture Development Committee should have been notified of the Department's proposal.
- b. Why is a commercial fishing license required of collectors in Section 243(c)?
- c. Why does Section 245(a) require all importations to be inspected from outside California and is testing required for all 31 diseases or pathogens? Does the State have resources to process this level of inspection and what costs and time delays are expected?
- d. The CAA requests the Commission table this proposal until the Aquaculture Development Committee has time to review it.

Department Response:

- a. Both of these committees were notified as part of the 45-day public notice period and additional outreach was provided since the discussion meeting to ensure all issues were addressed. No significant concerns have been raised.
- b. The fish or species taken under a wild broodstock permit are for aquaculture purposes, and the collector may not necessarily be the permit holder who must be a registered aquaculturist. If the permit holder is not present, the Department wants the collector operating under the wild broodstock permit to also possess a commercial fishing license pursuant to FGC Section 15300 which requires aquatic plants or animals may be legally obtained from the following sources: 1) A holder of a commercial fishing license, 2) A registered aquaculturist, 3) The Department, and 4) Imported sources authorized by Chapter 7 (commencing with Section 15600). The registered aquaculturist is exempt from this requirement by the same section.
- c. These comments do not address wild broodstock regulations and cannot therefore be addressed in this particular regulatory procedure.
- d. See Response 1a and Response 2a.

(3) Ralph Elston, AquaTechnics, letter dated October 20, 2008:

- a. All of his comments were directed to the aquaculture disease control proposal for Section 245 except for the following comment.
- b. He recommends Section 243(f) also require for aquatic animals that the weight, length and other appropriate size measurement be indicated as individual numbers or a range of the number collected.

Department Response:

- a. The comments do not address wild broodstock regulations and cannot therefore be addressed in this particular regulatory procedure.
- b. See Response 1a. Any additional requirements, such as the recommendation, will be specified on the permit, if applicable.

(4) James Ferrer, Ocean Conservancy, e-mail dated November 12, 2008:

- a. What criteria will be used to determine if wild broodstock is required to be held separately from other broodstock? (Sec. 243(g))
- b. What situations would warrant that logbooks are not required to be kept for broodstock collection activities? (Sec. 243(f)).
- c. Are there any requirements for broodstock progeny to be first or second generation from wild broodstock so as to maintain genetic diversity and protect against the impacts of escapes? (Sec 243(g)).

Department Response:

- a. The need for this requirement will be made on a site by site basis to ensure no disease cross contamination to allow the possibility that the wild broodstock could be returned to their nature habitat.
- b. Logbooks are presently only required for sturgeon broodstock permits as part of the permit conditions.
- c. Fish and Game Code Section 15001 states all broodstock progeny acquired pursuant to Section 15300 are the registered aquaculturist's exclusive property. Any broodstock progeny releases into State waters requires additional permitting from the Department.

(5) George Leonard, Director, Aquaculture Program, Ocean Conservancy, letter e-mail dated November 14, 2008 and James Ferrer, Ocean Conservancy, oral comments at Commission meeting on November 14, 2008:

- a. The Ocean Conservancy requests that wild broodstock always be held separately from non-wild broodstock.
- b. The Ocean Conservancy requests that logbooks be required for all wild broodstock collections to determine impacts of broodstock collections on the wild stocks and ecosystems.

Department Response:

- a. See Response 4a. Presently there are less than 5 wild broodstock permits issues each year and the comment will be noted for further review.
- b. See Response 4b. Presently there are less than 5 wild broodstock permits issues each year and the comment will be noted for further review.

(6) Paul Weakland, oral comments at Commission meetings on October 3, 2008 and November 14, 2008:

- a. He is concerned about sabellid worm issues in abalone.
- b. He is concerned about genetic issues in aquaculture.
- c. He requests all white abalone measures to combat sabellid worm in Abalone Fishery Management Plan be added to the wild broodstock regulations.
- d. He is concerned about the past conduct of the aquaculture industry.

Department Response:

- a. The additional measures are not necessary due to the newly required inspection for all wild broodstock permits which will be more effective at addressing sabellid worm issues in collected wild abalone broodstock.
- b. See Response 2c.
- c. See Response 6a.
- d. See Response 2c.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The present list of diseases and pathogens will not reflect new scientific information and therefore not effectively control new threats to cultured and/or wild aquatic animals.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary to effectively control threats to cultured and/or wild aquatic animals from diseases and pathogens and therefore the prevention of adverse economic impacts.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

At the Commission's March 6, 2008 meeting, the Department discussed possible changes to Section 243, Title 14, California Code of Regulations. This Title 14 section contains the regulations governing the take of wild aquatic plants and animals for use as broodstock for aquaculture purposes. The Commission concurred with the Department's request for regulatory changes to Section 243.

The Department's proposal will increase protection of wild aquatic populations from potential disease issues, strengthen the regulatory language for enforcement purposes, and revise outdated regulatory language. This proposal is a joint effort between the Department's Fisheries Branch, Law Enforcement Division, and the Aquaculture Coordinator.

The current regulations allow the release of hatchery-reared progeny from wild broodstock into state waters, lack effective enforcement measures to monitor, inspect and track wild broodstock collection and collection permit violations, and contain outdated provisions. The proposed changes are outlined in the following paragraphs organized by the categories of disease issues, enforcement needs and regulatory clean-up.

Disease issues

White Sturgeon Iridiovirus (WSIV) is a lethal viral pathogen of juvenile white sturgeon, *Acipenser transmontanus*. The virus has been isolated in farm-reared white sturgeon in the Pacific Northwest of North America, California, and Canada. Currently, there is no treatment for WSIV and it is considered a significant threat to wild sturgeon stocks by the Department.

Cultured sturgeon progeny from wild broodstock are allowed by current regulations to be released into state waters. This mitigation measure raises serious concern of the potential spread of diseases and pathogens from cultured stocks into wild native populations. A similar situation exists concerning abalone and uncertified sabellid-free aquaculture facilities.

The proposed changes for this category are:

1. Remove the subsection 243(b)(2) language that allows the release of wild broodstock progeny into the state waters to reduce or waive wild broodstock permit fees. The fee reduction or waiver exemption is no longer used by the Department due to the potential threat to California's wild aquatic populations.
2. Modify subsection 243(g) to specify that wild broodstock may be required to be held separately from other broodstock due to disease concerns.

Enforcement Needs

Section 243 lacks regulatory authority for law enforcement to identify people who assist collection operations, to ensure the collector and/or permit holder is present with the proper documentation, to stop assistants from conducting collection operations independently, to restrict recreational take activities by personnel during collection operations, to allow Department inspections anywhere that wild broodstock may be held, and to clarify that a violation of regulations or any permit condition may result in permit revocation or suspension.

The proposed changes for this category are:

1. Modify subsection 243(b) language to clarify the annual expiration date, require all people assisting the collector and/or permit holder to be listed on the permit with sufficient identification information, and ensure all existing special permit notifications, requirements and conditions are listed on the permit or attached pages.
2. Modify subsection 243(c) language to require the collector **if they are not the permit holder to have a commercial fishing license in their possession**, require all collectors and assistants to carry proper identification, and restrict assistants to assisting with the broodstock landing, collection equipment, or boat operation, and eliminate assistants from conducting collection operations independently.
3. Modify subsection 243(d) language to restrict all personnel from recreational take of any kind while performing collection activities authorized by the permit.
4. Modify subsection 243(e) to ensure the collector and/or permit holder will notify the Department (as specified in the permit) 48 hours prior to the onset of collection operations and clarify the notification process to allow for Department staff planning and travel.
5. Modify subsection 243(f) to require activity reports to be sent to the Aquaculture coordinator and to the Department office specified on the permit. Also if logbooks are required as a condition of the permit, they must be in the immediate possession of the collector and/or permit holder while performing collection activities.
6. Modify subsection 243(g) to clarify that the Department will determine the final disposition of the wild broodstock and specify that the wild broodstock collected will be marked as specified in the permit.
7. Modify subsection 243(h) to add that facilities, vehicles, vessels or other places where broodstock might be present, can be inspected for permit compliance and other enforcement purposes at any time without prior notification.
8. Modify subsection 243(i) to clarify that any person currently listed on a wild broodstock permit that violates the terms of their permit, or these wild broodstock

regulations, or has been convicted of a Fish and Game Code or Title 14 violation may be have their application denied or have their permit revoked.

9. Add subsection 243(j) to ensure all permit requirements and conditions shall be followed and clarify that any violation of the permit provisions may lead to permit revocation or suspension.
10. Add subsection 243(k) to list the appeal information for denial, revocation or suspension in a separate subsection for clarity.

Regulatory clean-up

The Section 243 was last updated in 1991. Several of subsections contain outdated regulatory structure, fees that need to be clarified and updated, and minor changes to clarify the regulations and reduce public confusion.

The proposed changes for this category are:

1. Modify subsection 243(a) to update the regulation citations and remove the reference to Ocean Ranching regulations as the Fish and Game Code section was repealed and the Title 14 section has expired.
2. Modify subsection 243(b) to update the regulation citations, list the 2008 administration fee as a range of [\$100-\$500] for discussion on Department permit administration and site inspection costs, add the form number and revision date for the application form, update the aquaculture coordinator's title, and clarify that the \$25 fee is a nonrefundable application fee. The range of administration fees is proposed to facilitate discussion on Department site inspection costs which consist of staff time, travel expenses, and lodging that varies depending upon site location and the nearest Department office.

Additional minor changes are proposed to clarify the regulations and reduce public confusion.

A minor change to the Informative Digest is proposed to clarify that a permit holder does not need a commercial license since they must be a registered aquaculturist. A registered aquaculturist is exempt from this requirement by the Fish and Game Code (FGC) Section 15300. This change will reduce public confusion that arose from the original description of the regulatory action.

The Department recommends the 2009 administration fee be set at \$500 to recover the Department costs for processing and initial inspection for a wild broodstock permit based upon the following Table 1

Table 1. Estimated Processing and Inspection Cost of Broodstock Permit		
<i>Associate or Senior Fish Pathologist trip to Northcoast/Delta from Sacramento/Bodega ¹</i>		
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Footnotes		
4) Salary estimates derived from 50/50 split of Associate and Senior positions.		
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6) Travel time based upon 55 mph.		

The Fish and Game Commission adopted the proposed regulations at its November 14, 2008 meeting.